

CUAUHTEMOC ORTEGA (Bar No. 257443)
Federal Public Defender
Chad Pennington (Bar No. 354831)
E-Mail: Chad_Pennington@fd.org
Deputy Federal Public Defender
3801 University Avenue, Suite 700
Riverside, California 92501
Telephone: (951) 276-6346
Facsimile: (951) 276-6368

Attorneys for Defendant

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS OMAR LOPEZ-QUINTERO

Defendant.

Case No. 5:25-CR-00037

Defendant's Sentencing Position

Sentencing Hearing Date & Time
April 4, 2025, at 10:00 a.m.

Defendant, Jesus Omar Lopez-Quintero, by and through counsel, Deputy Federal Public Defender Chad Pennington, hereby requests a custodial sentence of time-served, with one year of supervision to follow. As set forth below, Mr. Lopez believes the recommended time-served sentence best serves the statutory goals of sentencing set forth in 18 U.S.C. § 3553(a).

//

//

//

Supporting Memorandum

I. Introduction

The parties have entered a “fast-track” plea agreement whereby Mr. Lopez will receive a four-level offense reduction pursuant to U.S.S.G. § 5K3.1, in exchange for timely acceptance of responsibility. *See* ECF No. 31, p. 6. That “fast-track” reduction lowered Mr. Lopez’s sentencing guidelines range in addition to the standard two-level acceptance of responsibility offense level reduction. *See id.*; *see also* U.S.S.G. § 3E1.1(a). The parties agreed to an adjusted final offense level of 6. *See* ECF No. 31, p. 6. The parties further agreed to a modified presentence report, to expedite the matter for sentencing. To-date, Mr. Lopez’s criminal history score has not been calculated. Therefore, currently, United States Probation has not proposed an adjusted sentencing guidelines range.

II. Background

On March 28, 2025, Mr. Lopez plead guilty to count three of the indictment charging him under 18 U.S.C. § 1326(a), illegal reentry into the United States after a prior order of removal. *See* ECF No. 29; *see also* ECF No. 15, p. 4. The parties agree the remaining counts alleged in the indictment will be dismissed. Mr. Lopez agrees with the parties’ factual basis. *See* ECF No. 31, pp. 5-6. On February 6, 2025, the Court held Mr. Lopez’s initial appearance in this matter, and the Magistrate Judge ordered him detained pending trial and the conclusion of the case. ECF Nos. 3, 10. As a result, at the time of Mr. Lopez’s sentencing hearing before this Court, on April 18, 2025, Mr. Lopez will have served 71-days of federal criminal custody, or approximately two-and-a-thirds months of custody. Mr. Lopez believes that custodial period is sufficient, and more custodial time would be greater than necessary.

III. Legal Standard

“[S]entencing is an art, not to be performed as a mechanical process but

1 as a sensitive response to a particular person who has a particular personal
2 history and has committed a particular crime.” *United States v. Harris*, 679
3 F.3d 1179, 1183 (9th Cir. 2012). The Supreme Court’s instruction that the
4 advisory sentencing guidelines should be the “benchmark” of a sentencing
5 court’s analysis, *see Gall v. United States*, 128 S. Ct. 586 (2007), also reflects
6 the recognized proposition that the sentencing guidelines range may or may
7 not reflect an appropriate outcome.

8 **IV. Sentencing Position**

9 Section 3553(a), warrants the recommended time-served custodial term
10 and the recommend supervised release period to follow. Assuming *arguendo*
11 that the government’s calculated sentencing guidelines range is correct, *see*
12 ECF No. 34 p. 3, and Mr. Lopez’s sentencing guidelines range is 2-8 months,
13 the time-served sentence is slightly greater than the low-end term of 2
14 months. Thus, the proposed sentence of time-served, is within the guidelines,
15 and is thus reasonable. Indeed, Mr. Lopez asks the Court to exercise no
16 greater discretion than what is prescribed in the likely sentencing guidelines
17 range.

18 As to the statutory sentencing factors, Mr. Lopez will likely face removal
19 proceedings after this criminal case concludes, before an executive branch,
20 immigration tribunal. That removal period after this case will likely impose
21 at least a modicum of additional custody while the immigration proceeding
22 resolves (even if Mr. Lopez does not contest his removal). Applying *Harris*,
23 for this particular defendant committing this particular offense, a sentence
24 at the low-end, rather than the middle of the sentencing guidelines, better
25 reflects and accounts for the future detention that will likely follow in
26 immigration custody.

27 Finally, Mr. Lopez asks the Court to not consider the government’s offered
28 victim impact statement, contained in exhibit A of its sentencing position.

1 See ECF No. 34, Ex. A. The statement and its references to a larger criminal
2 enterprise are unsupported and prejudicial to Mr. Lopez’s sentencing.

3 Specifically, the government has offered a statement on behalf of the
4 BNSF Railway Police Department. The railroad police entity claims that “an
5 organized transnational criminal syndicate has been burglarizing” BNSF
6 trains over the last 15-years. See ECF No. 34, Ex. A, p. 2. The corporate victim
7 statement goes far beyond the parties’ stipulated factual basis and implicates
8 factual matters beyond the temporal scope of the suffered harm and the
9 admitted conduct at issue. Mr. Lopez would contest that he is a member of
10 an “organized transnational criminal syndicate” or that he has been part of
11 a larger effort to target BSNF railways over a protracted, targeted period. A
12 victim impact statement, assuming *arguendo* BNSF police is a statutory
13 victim, relates to the crime at issue, not the harm suffered generally or by a
14 victim many years before the instant proceeding and when the crime
15 occurred. Regrettably, BNSF may have lost cargo and revenues over the last
16 15-years due to acts of theft from organized crime, but there is no basis for
17 extended 15-year liability to be imputed upon Mr. Lopez To that end, a
18 statutory victim has a right to be “reasonable heard” but not to express
19 generalized societal grievances or to express frustration over past crimes,
20 many years before the conduct at issue, it may have suffered from that do not
21 implicate the charged defendant. To do so invites a sentencing court to
22 consider prejudicial sentencing material with limited probative value as to
23 what occurred in the matter at bar. Mr. Lopez should not have his sentencing
24 hearing prejudiced and a higher custodial term possibly imposed based upon
25 robberies committed against BNSF many years ago for which he did not, nor
26 could not, participate in.

27 Finally, Mr. Lopez has a constitutional right to be sentenced based on
28 reliable information, and his alleged connection to a larger “transnational”

1 criminal enterprise, targeting BNSF is not reliable as a permissible
 2 sentencing fact. *See e.g., United States v. Franklin*, 18 F.4th 1105, 1115 (9th
 3 Cir. 2021) (the Court holding that “evidence against a defendant in a
 4 sentencing hearing must bear sufficient indicia of reliability”). Indeed,
 5 procedurally, a victim letter is not an appropriate basis to introduce new
 6 offense conduct or factual allegations beyond the scope of the agreed upon
 7 facts in a factual basis plea agreement or the unobjected to portions of the
 8 PSR. Indeed, Federal Rule of Criminal Procedure 32(i)(B)-(C) has a specific
 9 procedure for the introduction of new information beyond the PSR, and it is
 10 not through victim impact statements: “At sentencing, the court: must give
 11 to the defendant and an attorney for the government a written summary of—
 12 or summarize in camera—any information excluded from the presentence
 13 report under Rule 32(d)(3) on which the court will rely in sentencing, and
 14 give them a reasonable opportunity to comment on that information” and as
 15 it relates to a victim statement “[u]pon a party’s motion and for good cause,
 16 the court may hear in camera any statement made under Rule 32(i)(4).”).
 17 Minimally, victim impact material that adds to or contradicts a factual basis
 18 or the factual description in the PSR should be submitted in camera for the
 19 Court’s review here. It cannot simply be offered as a victim letter.

20 Conclusion

21 Mr. Lopez respectfully requests a custodial term of time-served followed
 22 by a period of supervision under § 3553(a).

23
 24 Respectfully submitted,
 25 CUAUHTEMOC ORTEGA
 26 Federal Public Defender

27 DATED: April 4, 2025

By /s/ Chad Pennington

28 Deputy Federal Public Defender